

Issue: Compliance – grievance procedure (5 day rule); Ruling date: January 17, 2019; Ruling No. 2019-4837; Agency: Department of Corrections; Outcome: Grievant Not in Compliance.



**COMMONWEALTH of VIRGINIA**  
**Department of Human Resource Management**  
**Office of Equal Employment and Dispute Resolution**

**COMPLIANCE RULING**

In the matter of the Department of Corrections  
Ruling Number 2019-4837  
January 17, 2019

The Department of Corrections (the agency) has requested a compliance ruling related to the grievant's December 12, 2017 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding her grievance.

FACTS

On or about December 12, 2017, the grievant initiated a grievance with the agency. On January 29, 2018, the agency issued the grievant its third step response to the grievance. On August, 22 2018, the agency sent a letter of noncompliance to the grievant, via U.S. Mail, indicating that the agency had not received a response from her and would request administrative closure of the grievance if she did not respond within five workdays of receipt of the letter.<sup>1</sup> Finally, on January 14, 2019, the agency requested a compliance ruling from EEDR regarding the December 12, 2017 grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>2</sup> That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without EEDR's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.<sup>3</sup> If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from EEDR, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EEDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the

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<sup>1</sup> The mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee. E.g., *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988).

<sup>2</sup> *Grievance Procedure Manual* § 6.3.

<sup>3</sup> *See id.*

noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EEDR's order.<sup>4</sup>

In this case, the grievant appears to have failed to advance or conclude her grievance within five workdays of receiving the agency's third resolution step response, as required by the grievance procedure.<sup>5</sup> Moreover, the agency notified the grievant of her noncompliance, but the grievant has not advanced or concluded her grievance.

As the grievant has apparently failed to advance or conclude her grievance in a timely manner, she has failed to comply with the grievance procedure. EEDR therefore orders the grievant to correct her noncompliance **within five work days of the date of this ruling** by notifying her human resources office in writing that she wishes either to conclude the December 12, 2017 grievance or request qualification for hearing. If she does not, the agency may administratively close the grievance without any further action on its part. The grievance may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

EEDR's rulings on matters of compliance are final and nonappealable.<sup>6</sup>



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Christopher M. Grab  
Director  
Office of Equal Employment and Dispute Resolution

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<sup>4</sup> While in cases of substantial noncompliance with procedural rules the grievance statutes grant EEDR the authority to render a decision on a qualifiable issue against a noncompliant party, EEDR favors having grievances decided on the merits rather than procedural violations. Thus, EEDR will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, EEDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

<sup>5</sup> See *Grievance Procedure Manual* § 3.3.

<sup>6</sup> See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).